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KENNETH CANNATA

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HP TUNERS, LLC, a Nevada limited liability
company;

Plaintiff,

vs.

KENNETH CANNATA,

Defendants.

CASE NO. 3:18-CV-00527-LRH-WGC

**DEFENDANT KENNETH
CANNATA’S MOTION TO REDACT
OR SEAL SPECIFIED EXHIBIT
AND INFORMATION CONTAINED
IN CANNATA’S OPPOSITION TO
PLAINTIFF’S MOTION FOR WRIT
OF ATTACHMENT [ECF NO. 86]
AND CORRESPONDING
DECLARATION [ECF NO. 87]**

Pursuant to Local Rule 10-5, Defendant Kenneth Cannata (“Cannata”), by and through its counsel of record, hereby files this Motion to Redact or Seal Specified Exhibits and Information contained in Cannata’s Opposition to Plaintiff’s Motion for Writ of Attachment [ECF No. 86] and Corresponding Declaration [ECF No. 87]. Specifically, Cannata seeks to redact/seal information contained within his Opposition to Plaintiff’s Motion for Writ of Attachment as well as information contained in his corresponding Declaration and Exhibit A thereto.

Cannata seeks an order from this Court authorizing the filing of the redactions contained in Cannata’s Opposition to Plaintiff’s Motion for Writ of Attachment [ECF No. 86] (the “Opposition”) as well as the Cannata’s Declaration in Support thereto [ECF No. 87] (the

1 “Declaration”), for which corrected images and notices of the same were filed as ECF No. 88 and
 2 ECF No. 89, respectively.

3 DATED this 17th day of December 2020.

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5
 6 /s/ Bart K. Larsen, Esq.
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11 I. INTRODUCTION

12 On or about June 6, 2019, this Court entered an Order granting Cannata and Plaintiff HP
 13 Tuners, LLC’s (“Plaintiff”) stipulation for protective order (the “Protective Order”) [ECF No. 30].
 14 The Protective Order outlines various types of “Confidential” information, which includes non-
 15 public documents relating to the business and dealings of the parties. Cannata timely filed his
 16 Opposition and Declaration on December 15, 2020. On December 17, 2020, Plaintiff’s counsel
 17 contacted Cannata’s counsel to request that certain information contained in the Opposition and
 18 Declaration as well as Exhibit A to the Declaration be designed as “confidential” under the
 19 Protective Order and requested that Cannata take action to redact such information and documents
 20 from the publicly filed versions of the Opposition and Declaration. Cannata’s counsel agreed to
 21 accommodate these requests. Accordingly, Cannata respectfully requests that this Court grant
 22 this Motion and authorize Cannata’s filing of the redactions contained in his corrected filing of his
 23 Opposition and Declaration.

24 II. LEGAL STANDARD

25 Public “access to judicial records is not absolute.” *Kamakana v. City & Cnty. Of Honolulu*,
 26 447 F.3d 1172, 1178-79 (9th Cir. 2006). Although a strong presumption of public access to judicial
 27 records exists, information such as “confidential business information, proprietary technology, and
 28 trade secrets are routinely protected by filing under seal....” *Collectors Coffee Inc. v. Blue Sunsets*,

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1 *LLC*, No. 2:17-cv-01252-JCM, 2017 U.S. Dist. LEXIS 96273 (D. Nev. June 21, 2017).
2 Additionally, the public’s interest in accessing court records is diminished when the document and
3 confidential information therein is included with a non-dispositive motion as opposed to a
4 dispositive motion. *See Kamakana*, 447 F.3d at 1179.

5 Indeed, when the motion to be sealed/redacted (or the documents attached thereto) is a
6 dispositive motion—i.e., summary judgment or a motion to dismiss—the party seeking to
7 redact/seal must show a compelling reason as to why sealing or redaction is necessary. *Id.*
8 However, when there is a “discovery document [attached] to a non-dispositive motion” the normal
9 presumption of access to judicial records is rebutted, and the party seeking to seal or redact only
10 need to show that “good cause” exists to protect this information from the public eye. *Id.* at 1179-
11 80. Put differently, a good cause showing will suffice to keep sealed records attached to
12 nondispositive motions. *Id.*

13 Here, the pleading at issue which is sought to be redacted/sealed is a response to a Motion
14 for Prejudgment Writ of Attachment. This is not a dispositive motion as it will not effectively
15 resolve all issues in this matter. As such, the good cause standard applies. As is shown below,
16 good cause exists to redact/seal the information contained in Cannata’s Response/Opposition to
17 the Motion for Prejudgment Writ of Attachment as well as his supporting Declaration thereto.

18 **III. GOOD CAUSE EXISTS TO GRANT THE MOTION AND ALLOW FOR**
19 **REDACTION OF THE SPECIFIED PORTIONS OF CANNATA’S OPPOSITION**
20 **TO PLAINTIFF’S MOTION FOR PREJUDGMENT WRIT AND SUPPORTING**
21 **DECLARATION THERETO**

22 Applying the good cause standard from *Kamakana*, the Motion should be granted based on
23 the language of the Protective Order stipulated to between the parties, as well as this Court’s
24 comments to the same, and the fact that the information sought to be redacted/sealed is private
25 business information and dealings between the parties.

26 The Protective Order defines “Confidential Material” as:

27 2.1 “Confidential” material shall include the following documents and tangible
28 things produced or otherwise exchanged: business records and employee files;
documents relating to expertise and knowledge, including automotive tuning data
and data related to other types of vehicles; documents relating to undisclosed

advertising and marketing; management communications; pricing information; agreements with employees and non-parties; technical information about a party's products or anticipated products; *communications and other nonpublic documents relating to the business and dealings of the parties*.

[ECF No. 30] (emphasis supplied). The Protective Order goes on to authorize, at ¶ 4.4, parties to seek permission from the Court to file material under seal. *Id.* The Court also added comments at the end of the Protective Order, requiring any motion to seal to comply with the requirements of *Kamakana*. Here, all of the information requested to be sealed complies with the foregoing requirements, and the Motion should be granted.

Specifically, by way of this Motion, Cannata seeks to redact/seal:

- Pg. 4, lines 3-23, including footnote 5, of Cannata's Opposition to Plaintiff's Motion for Prejudgment Writ of Attachment [ECF No. 86];
- Pg. 2, lines 9-28, and pg. 3, lines 1-2 of Cannata's corresponding Declaration in Support of his Opposition [ECF No. 87], which contains the same information sought to be redacted in the Opposition; and,
- The entirety of Exhibit A to Cannata's Declaration, which is the documentation supporting the statements made in the Opposition and supporting Declaration thereto.

Good cause exists to redact/seal this information because the public's interest in the same does not outweigh the confidential nature of such information.

IV. CONCLUSION

Accordingly, Cannata respectfully requests that his Opposition [ECF No. 86], and corresponding Declaration and Exhibit A thereto [ECF No. 87] remain redacted.

DATED this 17th day of December 2020.

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/s/ Bart K. Larsen, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2020, I electronically transmitted the foregoing DEFENDANT KENNETH CANNATA'S MOTION TO REDACT OR SEAL SPECIFIED EXHIBIT AND INFORMATION CONTAINED IN CANNATA'S RESPONSE TO PLAINTIFF'S MOTION FOR WRIT OF ATTACHMENT [ECF NO. 86] AND CORRESPONDING DECLARATION [ECF NO. 87] to the Office of the Clerk of the United States District Court, District of Nevada, using the CM/ECF System, for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants listed for this matter.

By: /s/ Bart K. Larsen, Esq.

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